

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

JUL 26 2005

FILED

STATE OF NEBRASKA )  
DEPARTMENT OF INSURANCE, )

PETITIONER, )

VS. )

RICHARD D. GRAY, JR., AND )

UNITED PERSONAL INSURANCE, )

RESPONDENTS. )

CONSENT  
ORDER

CAUSE NO. A-1623

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Keri Schechinger and Richard D. Gray, Jr. ("Respondent Gray") and United Personal Insurance ("Respondent UPI"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondents pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047, et seq.

2. Respondent Gray was licensed as an insurance producer under the laws of Nebraska at all times material hereto.

3. At all times material hereto, Respondent UPI did not hold a license with the Nebraska Department of Insurance.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Richard D. Gray, Jr. and United Personal Insurance, Cause Number A-1623 on May 24, 2005. A copy of the petition was

served upon Respondents at Respondents' registered business address, by certified mail, return receipt requested.

2. The Petition alleges that Respondent Gray violated Neb. Rev. Stat. §§ 44-101, 44-4057, 44-4059(1)(b), and 44-4059(1)(h) through the following conduct:

- a. On or about April 2, 2005, Respondent Gray contacted Margaret Rasmussen via telephone to solicit a Central Reserve Life Insurance Company Medicare supplement insurance policy.
- b. In a letter dated April 1, 2005, from "Policyholder Service" on letterhead of United Personal Insurance to Ms. Rasmussen, the following insurance solicitation was made:

"Per our telephone conversation, please sign the highlighted areas and return in the enclosed envelope, this will enable me to instate the policy at the non-smoker rate. Please enclose a **voided** check and I will adjust the automatic payment at the bank. Your new monthly rate will be **\$165.52** per month beginning in May. That is a savings of approximately **\$528** a year."
- c. The letter to Ms. Rasmussen did not suggest that a time be set up with a licensed agent to review the application, did not suggest that she review the application and attached materials other than to sign where indicated, and did not provide her with the name or contact information of a licensed agent or licensed agency.
- d. Attached to the April 1, 2005 letter Mrs. Rasmussen was a partially completed application for a Central Reserve Life Insurance Company Medicare supplement insurance policy, which included an Acknowledgement of Nonduplication form. Certain portions of the Acknowledgement of Nonduplication form were completed, including a statement in which the agent certifies that he had reviewed the applicant's Mutual of Omaha Medicare supplement policy and found that duplication would not occur with the issuance of the Central Reserve Life Insurance Company Medicare supplement insurance policy, even though there is no indication that the policy was in fact reviewed and the name of the agent was left blank.
- e. Also attached to the April 1, 2005 letter was a pre-addressed and stamped return envelope, which was addressed to "UPI (Insurance), P.O. Box 541176, Omaha, NE 68154."

- f. The April 1, 2005 letter and attachments failed to include Respondent Gray's name in the materials. The only entity listed in the letter and enclosed materials, other than Central Reserve Life Insurance Company, were "United Personal Insurance" and "UPI (Insurance)."
- g. Neither "United Personal Insurance" nor "UPI (Insurance)" is licensed as insurance producers. In addition, neither "United Personal Insurance" nor "UPI (Insurance)" is appointed with Central Reserve Life Insurance Company to sell insurance on that company's behalf.
- h. In a handwritten letter dated April 21, 2005, Respondent Gray represented to the Department that he did not realize that his name was nowhere to be found on the solicitation materials sent to Ms. Rasmussen, and that he had "already changed his reminder letter to include [his] name." However, Respondent Gray did not provide a copy of such to the Department.
- i. In a letter dated May 4, 2005, Respondent Gray represented to the Department that he is "the owner, president, and sole employee of Upi Nit, Inc. UPI is not an agency. Upi Nit, Inc. is a registered corporation in the State of Nebraska, and is recognized by the IRS as a corporation that deals with insurance."
- j. Respondent Gray also stated, in the May 4, 2005 letter that, "As far as listing UPI on the return envelopes, I never intended to represent UPI as an agency. I was simply providing a return envelope to my registered business address."

3. The Petition further alleges that Respondent UPI violated Neb. Rev. Stat. §§ 44-101, 44-4050, 44-4059(1)(b), and 44-4059(1)(h) based upon conduct alleged in Paragraphs 2.a. through 2.j. above, which allegations are incorporated herein by reference.

4. Respondent Gray provided assurances that he has changed his business practices such that he always uses his own legal name in connection with the sale, solicitation or negotiation of insurance business; that he uses only his own legal name in connection with the sale, solicitation or negotiation of insurance business and that he no longer uses the name "United Personal Insurance" or "UPI (Insurance)" for any purposes.

Respondent Gray also provided assurances that he in fact reviews any and all insurance policies that are or may be replaced in connection with the sale, solicitation or negotiation of insurance business prior to certifying that he has reviewed such policies.

5. The Department agrees to dismiss the allegations against Respondent United Personal Insurance.

6. Respondent Gray was informed of his right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving his right to a public hearing, Respondent also waives his right to confrontation of witnesses, production of evidence, and judicial review.

7. Respondent Gray admits the remaining allegations contained in the Petition and restated in Paragraph # 2 above.

#### CONCLUSIONS OF LAW

Respondent Gray's conduct as alleged above constitutes violations of Neb. Rev. Stat. §§ 44-4057 and 44-4059(1)(h).

#### CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent Gray that Respondent Gray shall pay an administrative fine of \$1,000. The fine shall be paid in total within thirty (30) days after the Director of the Department of Insurance affixes his signature to this document and approves said consent agreement. Respondent Gray further promise that all correspondence from him to customers or clients, or potential customers or clients, of his shall include the name of, and contact information for, a licensed individual insurance producer. Respondent additionally promises that if Respondent Gray

wishes to do business under any name other than his own legal name, he shall notify the director prior to using the assumed name and that unless and until Respondent UPI becomes licensed as an insurance producer, no insurance-related business shall be done in the name of Respondent UPI, which includes the use of UPI letterhead.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing his or her signature below.

Keri Schechinger  
Keri Schechinger, Counsel  
Nebraska Department of Insurance  
941 "O" Street, Suite 400  
Lincoln, Nebraska 68508  
(402) 471-2201

7-21-05  
Date

[Signature]  
Respondent Gray

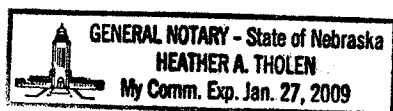
7-19-05  
Date

\_\_\_\_\_  
Attorney for Respondent

\_\_\_\_\_  
Date

State of NEBRASKA )  
 ) ss.  
County of Douglas )

On this 15th day of June, 2005, Richard D. Gray, Jr. personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his voluntary act and deed.



Heather A. Tholen  
Notary Public

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Richard D. Gray, Jr. and United Personal Insurance, Cause Number A-1623.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



L. TIM WAGNER  
Director of Insurance

7/26/05  
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to Respondent Gray at Upi Nit, Inc., P.O. Box 541176, Omaha, NE 68154 by certified mail, return receipt requested on this 20<sup>th</sup> day of July, 2005.

